



**North Carolina Department of Health and Human Services
Division of Medical Assistance**

Pat McCrory
Governor

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Ambassador (Ret.)
Secretary DHHS

Carol H. Steckel, MPH
Director

April 5, 2013

Via US Mail and electronically

Herr1821@westernhighlands.org

Mr. Don Herring
Director, Western Highlands Network
356 Biltmore Avenue
Asheville, NC 28801

RE: Termination of the Western Highlands Network PIHP Contract

Dear Mr. Herring:

By letter dated March 4, 2013, Western Highlands Network ("WHN") was notified that the Department of Health and Human Services ("DHHS"), Division of Medical Assistance ("DMA") was sending an onsite monitoring team to WHN. That letter also advised WHN that it should take no further action regarding an award of a contract for a new claims processing system. After careful deliberation, it has been decided that the Contract between DHHS/DMA and WHN which authorized WHN to operate as a Prepaid Inpatient Health Program ("PIHP") should be terminated. This letter serves as the prior written notice of termination without cause of that Contract. Pursuant to Section 12.2, DHHS/DMA is exercising its contractual right to terminate this Contract without cause.

This termination shall be effective on July 31, 2013. During this time period, we will be meeting with your staff and others in your region to discuss and plan for the transition of your activities and operations to assure your consumers have a smooth transition and that their services are not interrupted.

This termination is without cause and authorized by Attachment B, Scope of Work Section 12.2 of the Contract which provides:

This Contract may be terminated without cause by either party by giving ninety days prior written notice to the other party. The termination shall be effective at 11:59:59 p.m. on the last day of the calendar month in which the ninety day notice period expires.

Pursuant to Section 12.2 a.-c., the DMA and WHN shall work together to minimize any disruption of services to clients. WHN shall perform all of the duties specified in Section 12.5, (a

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copy is attached for your convenience), and WHN shall pay DMA in full any refunds or other sums due DMA under this Contract.

In reaching the decision to exercise the termination without cause provision of this Contract, DMA has thoroughly considered the situation and implications. I thank you in advance for your cooperation and assistance during the time of transition. We must work together closely to protect consumers from disruption in services.

Sincerely,



Carol Steckel, MPH
Director

Enclosure

Cc: Charles A. Schoenheit, Acting CEO
Emery E. Milliken, DHHS
Kelly Crosbie, DMA
Jim Jarrard, DMH/DD/SAS
Charles Vine, Western Highlands Board, Chairman
Iain Stauffer, NC DOJ

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SECTION 12 - DEFAULT AND TERMINATION

12.1 WESTERN HIGHLANDS Breach; Remedies:

If WESTERN HIGHLANDS breaches the terms of this Contract, DMA may issue a written notice of breach to WESTERN HIGHLANDS that describes the breach and requires WESTERN HIGHLANDS to submit to DMA, within thirty days, a corrective action plan for DMA's approval. If WESTERN HIGHLANDS does not timely cure the breach to DMA's satisfaction, DMA may impose one or more or all of the sanctions listed below:

- a. The suspension, recoupment, or withholding of monthly capitation payments;
- b. The assessment of refundable or non-refundable penalties;
- c. The assessment of monetary damages; and
- d. The termination of this Contract.

Notwithstanding the foregoing, DMA may impose any of these sanctions, or any other available sanctions, against WESTERN HIGHLANDS and in accordance with 24 CFR §438.710, without first giving WESTERN HIGHLANDS an opportunity to cure the deficiency.

12.2 Termination Without Cause:

This Contract may be terminated without cause by either party by giving ninety days prior written notice to the other party. The termination shall be effective at 11:59:59 p.m. on the last day of the calendar month in which the ninety day notice period expires. In the event of termination by either party without cause:

- a. DMA and WESTERN HIGHLANDS shall work together to minimize any disruption of services to clients;
- b. WESTERN HIGHLANDS shall perform all of the duties specified in SOW Section 12.5 below; and
- c. WESTERN HIGHLANDS shall pay DMA in full any refunds or other sums due DMA under to this Contract.

If WESTERN HIGHLANDS exercises its right to terminate this Contract without cause, DMA may require WESTERN HIGHLANDS to pay the non-federal share of the transition costs; i.e., the costs of EIS, MMIS, and recipient notifications.

12.3 Termination For Cause:

DMA shall have the right to terminate this Contract immediately for cause -- and provide Medicaid benefits to Enrollees through other options in the State Plan -- if DMA determines that:

- a. WESTERN HIGHLANDS or one of its subcontractors or Providers has substantially failed to comply with the material terms of this Contract and WESTERN HIGHLANDS fails to take appropriate action immediately to correct the problem;
- b. WESTERN HIGHLANDS or one of its subcontractors or Providers has substantially failed to comply with the applicable requirements of Sections 1932, 1903(m), and 1905(t) of the Social Security Act and WESTERN HIGHLANDS fails to take appropriate action immediately to correct the problem;
- c. WESTERN HIGHLANDS or one of its subcontractors or Providers has substantially failed to comply with the requirements of any other State or federal Medicaid or MH/DD/SAS statute, rule, or regulation and WESTERN HIGHLANDS fails to take appropriate action immediately to correct the problem;

- d. The performance of WESTERN HIGHLANDS or one of its subcontractors or Providers threatens to place the health or safety of any Enrollee in jeopardy and WESTERN HIGHLANDS fails to take appropriate action immediately to correct the problem;
- e. WESTERN HIGHLANDS becomes subject to exclusion from participation in the Medicaid program pursuant to Section 1902(p)(2) of the Social Security Act or 42 U.S.C. 1396a(p);
- f. WESTERN HIGHLANDS or one of its subcontractors or Providers fraudulently misleads any Enrollee or fraudulently misrepresents the facts or law to any Enrollee and WESTERN HIGHLANDS fails to take appropriate action immediately to correct the problem; and
- g. Gratuities of any kind are offered to or received by any public official, employee or agent of the State by or from WESTERN HIGHLANDS, its agents, employees, subcontractors or Providers.
- h. Total expenses (medical and administration), including estimates of incurred but not reported medical expenses and accrued administrative expenses, exceed 100% of the total monthly capitation payments in any three-consecutive-month period.
- i. Current ratio: Current assets divided by current liabilities is less than 1.00 at any point in time.
- j. Defensive interval: Is less than thirty (30) days. Defensive interval = $(\text{Cash} + \text{Current investments}) / ((\text{Operating expense} - \text{Non-cash expense}) / \text{Period being measured in days})$ at any point in time.
- k. Medical Loss Ratio – Medical claims expense divided by the total capitation payment must not fall below 80% at any point in time.

12.4 Automatic Termination:

This Contract shall immediately and automatically terminate without further obligation to the Division of Medical Assistance if:

- a. Either of the two sources of reimbursement for Medical Assistance (appropriations from the North Carolina General Assembly and appropriations from the United States Congress) no longer exists; or
- b. In the event that the sum of all contractual obligations of DMA for Medical Assistance Benefits, equals or exceeds the balance of funds available to DMA for Medical Assistance Benefits for the contract year in which this Contract is effective, then this Contract shall immediately terminate

Written certification by the Director of the Division of Medical Assistance that one or the other or both of the conditions described in subsections (a) and (b) has been met shall be conclusive and binding upon the parties. The Division of Medical Assistance shall attempt to provide WESTERN HIGHLANDS with ten (10) days' notice of the possible occurrence of events described in subsections (a) and (b) of this section.

12.5 WESTERN HIGHLANDS's Obligations Upon Contract Expiration or Termination:

Upon the expiration or termination of this Contract, WESTERN HIGHLANDS shall:

- a. Continue to perform all of the duties described in this SOW until 11:59:59 p.m. on the last day of the calendar month for which DMA has paid the monthly capitation rate;

- b. Continue to provide authorization and payment for inpatient psychiatric hospital services and any services directly related to psychiatric inpatient care, to any Enrollees who are hospitalized on the termination date, until each such Enrollee is discharged;
- c. Provide DMA with a report of all active authorizations and authorization limits, as of the date of termination;
- d. Provide DMA with a list of Enrollees who are hospitalized, and where each Enrollee is hospitalized, as of the date of termination;
- e. Provide DMA with a list of patients in psychiatric residential treatment facilities (PRTFs), and where each PRTF patient is hospitalized, as of the date of termination;
- f. Arrange for the transfer of Enrollees to other appropriate Medicaid Providers or managed care entities;
- g. Promptly provide DMA with information about all outstanding claims, as of the date of termination, and arrange for the payment of such claims;
- h. Take such action as may be necessary, or as DMA may direct, for the protection of property related to this Contract, which is in the possession of WESTERN HIGHLANDS and in which DMA has an interest;
- i. Arrange for the secure maintenance of all WESTERN HIGHLANDS records for audit and inspection by DMA, CMS, and other authorized government officials, in accordance with Section 8 of this Contract;
- j. Provide for the transfer of all data, including encounter data and records, to DMA or its agents as may be requested by DMA;
- k. Provide for the preparation and delivery of any reports, forms or other documents to DMA as may be required pursuant to this Contract or any applicable policies and procedures of DMA; and
- l. Notify all Enrollees in writing of the pending expiration or termination of the Contract no less than forty-five (45) days prior to the date of the expiration or termination. If DMA terminates the Contract immediately for cause, pursuant to SOW Section 12.3, WESTERN HIGHLANDS shall provide notice of termination as promptly as possible after WESTERN HIGHLANDS receives the notice of termination from DMA. Similarly, if the Contract is terminated immediately because of a lack of funds, pursuant to SOW Section 12.4, WESTERN HIGHLANDS shall provide notice of termination as promptly as possible after WESTERN HIGHLANDS receives the notice of termination from DMA. In all cases, WESTERN HIGHLANDS's notification letter must be approved by DMA before WESTERN HIGHLANDS mails the notice to Enrollees.

The obligations set forth in this SOW Section 12.5 shall survive the expiration or termination of this Contract and shall remain fully enforceable by DMA against WESTERN HIGHLANDS. In the event that WESTERN HIGHLANDS fails to fulfill each obligation set forth in this Section, DMA shall have the right, but not the obligation, to arrange for the provision of such services and the fulfillment of such obligations, all at the sole cost and expense of WESTERN HIGHLANDS and WESTERN HIGHLANDS shall refund to DMA all sums expended by DMA, in writing in so doing.

12.6 DMA's Obligations Upon Contract Expiration or Termination:

Upon the expiration or termination of this Contract, DMA shall:

- a. Continue to pay the monthly capitation rate through the effective date of expiration or termination;

- b. Continue to provide the monthly list of beneficiaries eligible to be enrolled in the WESTERN HIGHLANDS PIHP through the effective date of expiration or termination;
- c. Continue to provide all data required to be shared with WESTERN HIGHLANDS through the effective date of expiration or termination;
- d. Provide assistance to WESTERN HIGHLANDS with respect to the transfer of Enrollees to other appropriate Medicaid providers or managed care entity;
- e. Provide assistance with the transfer of all data, including encounter data and records, to DMA or its agents as may be requested by DMA;
- f. Provide assistance with the preparation and delivery of any reports, forms or other documents to WESTERN HIGHLANDS as may be required pursuant to this Contract or state or federal law; and

The obligations set forth in this SOW Section 12.6 shall survive the expiration or termination of this Contract and shall remain fully enforceable by WESTERN HIGHLANDS against DMA. In the event that WESTERN HIGHLANDS fails to fulfill each obligation set forth in this Section, WESTERN HIGHLANDS shall have the right, but not the obligation, to arrange for the provision of such services and the fulfillment of such obligations, all at the sole cost and expense of DMA and DMA shall refund to WESTERN HIGHLANDS all sums expended by WESTERN HIGHLANDS, in writing in so doing.

SECTION 13 – PENALTIES, SANCTIONS and TEMPORARY MANAGEMENT:

13.1 DMA may use any one or more of the following options to ensure compliance with the provisions of this SOW:

- a. Corrective Action Plan: To be developed by WESTERN HIGHLANDS at the request of DMA. The Plan must be approved by DMA, in writing and shall be monitored by the Monitoring Team and DMA (SOW Section 1.6: Monitoring Process). DMA is not required to offer a Corrective Action Plan prior to taking any other action against Contractor;
- b. Penalties and Sanctions: (SOW Section 13.2:– Monetary Penalties; SOW 13.3 Sanctions; and .
- c. Temporary Management: (SOW Section 13.4: Temporary Management); and
- d. Termination: (SOW Section 12: Default and Termination).
- e. Prior to imposing any of the sanctions identified in 42 CFR Part 438, Subpart I and/or Sections 13.2 and 13.3 of this Scope of Work, DMA will provide notice to WESTERN HIGHLANDS in accordance with 42 CFR §438.710.

13.2 Monetary Penalties

If WESTERN HIGHLANDS does not adhere to the reporting and data submission requirements and deadlines specified within this Contract, DMA may impose monetary penalties. DMA shall communicate the penalties in writing to WESTERN HIGHLANDS and DMA's fiscal agent.

All financial reports prepared and submitted by WESTERN HIGHLANDS subsequent to the imposition of penalties shall reflect the penalties.

DMA shall have the right to assess monetary penalties pursuant to SOW Section 11.2: Timeliness of Provider Payments and Section 9.3: Reporting Requirements.

13.3 Sanctions